IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1531 OF 2005

Ramshray S.Singh .. Petitioner

versus

M/s Sanjay Mehra Asso. & anr. Respondents

Mr.M.D.Nagle for Petitioner

Mr P.K.Rele with Mr V.M.Tayade i/b Mr.Piyush Shah for Respondents

CORAM : D.G. KARNIK, J

DATED : 26th July, 2005.

P.C.

1. Rule. Mr Rele waives service.

2. By consent the petition is taken up for hearing forthwith.

3. Heard learned counsel for the parties. This petition is directed against the judgment and order

dated 23rd September 2004 passed by the Labour Court Mumbai rejecting the petitioner's application under section 33 (c) (2) of the Industrial Disputes Act. (for short the Act).

4. The petitioner claims that his services were terminated with effect from 5th September, 1995 without payment of retrenchment compensation. He did not challenge the termination but only claimed the retrenchment compensation and as it was not paid he filed the application under section 33 (c) (2) of the Act. By filing the written statement the respondents disputed the claim of the petitioner. They contended that the respondent no.2 who was the proprietor to the respondent no. 1 was a sales tax consultant and therefore they were not an industry. They further contended that the services of the petitioner were not terminated but the petitioner had voluntarily abandoned the service and therefore he was not entitled to any retrenchment compensation.

5. It is settled position in law that an application under section 33 (c) (2) is in the nature of an execution application. Disputed

questions of fact cannot be adjudicated upon in an application under section 33 (c) (2) of the Act. Termination of service was denied. Retrenchment was thus not an undisputed or an undisputable fact. In the circumstances, application under section 33 (c (2) of the Act for claiming retrenchment compensation was not maintainable. The Labour court has rightly held that application for retrenchment compensation was not maintainable.

6. The respondent had also claimed unpaid salary for 5 days of September 1995. The fact that the petitioner worked for a period of 5 days in September 1995 was not disputed in the written statement and also is not disputed before me. In the circumstances the petitioner was entitled to salary of Rs.465/- as claimed under item no. 1 of the Annexure to the complaint. To that extent the judgment of the Labour Court is incorrect and is required to be set aside. As regards claim for notice pay and travelling allowance the claim was denied. In view of the abandonment of the service there was no question of paying any amount in lieu of notice and the same is also rightly rejected by the Labour Court.

7. For these reasons the petition is partly allowed. The respondents are directed to pay to the petitioner a sum of Rs.465/- being unpaid salary and costs of this petition which are quantified at Rs.5000/-.

D.G.KARNIK, J